

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

OAH No. 2010101001

JAVIER A.R.

Claimant,

vs.

SAN GABRIEL/POMONA REGIONAL  
CENTER,

Service Agency.

**DECISION**

This matter was heard by Humberto Flores, Administrative Law Judge with the Office of Administrative Hearings on July 20, 2011, in Pomona, California.

Javier A. R., claimant, appeared personally and represented himself.

Daniela Martinez represented the San Gabriel/Pomona Regional Center (Service Agency).

Oral and documentary evidence was received and the matter was submitted for decision.

**ISSUE**

Is claimant eligible for regional center services based any of the four qualifying conditions<sup>1</sup> or on “the fifth category” (a disabling condition found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation) pursuant to Welfare and Institutions Code section 4512, subdivision (a), and California Code of Regulations, title 17, section 54000?

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<sup>1</sup> The four qualifying conditions for regional center services are autism, cerebral palsy, epilepsy, or mental retardation.

## FACTUAL FINDINGS

1. Claimant, a 27 year-old man, is requesting eligibility for regional center services based on his contention that he suffers from a disabling condition caused by his diagnosed depression.
2. Claimant was born in El Salvador but moved to the United States when he was four years old.
3. The Service Agency did not offer to conduct an “intake assessment” because it determined that claimant is not eligible for regional center services because he does not suffer from autism, mental retardation, cerebral palsy, epilepsy, or from a disabling condition under the “fifth category” as set forth in Welfare and Institutions Code section 4512, subdivision (a), or California Code of Regulations, title 17, section 54000. The Service Agency’s refusal to conduct an intake assessment is essentially a denial of services to claimant under the Lanterman Act. Claimant filed a request for a hearing.
4. Claimant suffers from depression for which he has been receiving psychiatric services since 2008. He takes medication including Zoloft for depression and Vistaril for insomnia. Claimant testified that his bouts of depression are at times so severe that he does not leave his room.
5. Claimant does not suffer from any of the four qualifying conditions for regional center services. Although he has been diagnosed with depression, he did not establish that suffers from a disabling condition closely related to mental retardation or that requires treatment similar to that required for persons with mental retardation. The psychological assessment report introduced in this matter was completed in 2000 while claimant was a high school student. The assessment was conducted to determine eligibility for special education services. The assessment report indicates that claimant’s cognition level was in the high borderline range with low average academic skills. This report does not establish that claimant suffers from a substantial disability or that he has a major impairment of cognitive functioning. Claimant did not present any recent assessments of his cognitive abilities.

## LEGAL CONCLUSIONS

1. Claimant does not have autism disorder, cerebral palsy, epilepsy or mental retardation. Therefore, claimant is not eligible for regional center services based on any of the above conditions pursuant to Welfare and Institutions Code section 4512, subdivision (a),

2. Claimant is not eligible for regional center services based on the fifth category (a disabling condition found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation) pursuant to Welfare and Institutions Code section 4512, subdivision (a), and California Code of Regulations, title 17, section 54000.

3. California Code of Regulations, title 17, section 54000 defines “developmental disability” as a disability attributable to mental retardation, cerebral palsy, epilepsy, autism, or other conditions closely related to mental retardation, or that require treatment similar to that required for individuals with mental retardation. The disability must originate before age 18, be likely to continue indefinitely, and constitute a substantial disability. Welfare and Institutions Code section 4512, subdivision (l), defines substantial disability as follows:

(1) The existence of significant functional limitations, as determined by the regional center, in three or more of the following areas of major life activity, as determined by the regional center, and as appropriate to the age of the person:

- (1) Receptive and expressive language;
- (2) Learning;
- (3) Self-care;
- (4) Mobility;
- (5) Self-direction;
- (6) Capacity for independent living;
- (7) Economic self sufficiency.

California Code of Regulations, title 17, section 54001 defines substantial disability as follows:

(1) A condition which results in major impairment of cognitive and/or social functioning, representing sufficient impairment to require interdisciplinary planning and coordination of special or generic services to assist the individual in achieving maximum potential; and

(2) The existence of significant functional limitations, as determined by the regional center, in three or more of the following areas of major life activity, as appropriate to the person’s age:

- (A) Receptive and expressive language;
- (B) Learning;
- (C) Self-care;
- (D) Mobility;
- (E) Self-direction;
- (F) Capacity for independent living;
- (G) Economic self sufficiency.

4. For Claimant to be eligible for regional center services, it must be determined that he suffers from a developmental disability. That disability must fit into one of the eligibility categories mentioned in California Code of Regulations, title 17, section 54000, and must not be solely from an excluded condition. Excluded conditions are handicapping conditions that are solely psychiatric disorders, solely learning disabilities, or solely physical.

5. Claimant's depression is at times severe but it is not a qualifying condition. Further, claimant did not prove that he has a developmental disability or that he suffers from a major impairment of cognitive and/or social functioning which has resulted functional limitations in three or more of the above referenced areas.

### ORDER

The San Gabriel /Pomona Regional Center's determination that claimant is not eligible for regional center services is affirmed. Claimant's appeal of that determination is denied.

DATED: July 21, 2011

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HUMBERTO FLORES  
Administrative Law Judge  
Office of Administrative Hearings

### NOTICE

**This is the final administrative decision. Both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.**